IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 50-M of 1993 (O&M)
Date of decision: May 03,2011

Yash Paul Handa

.. Appellant

v.

Saroj Handa alias Saroj Malhotra

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar and Mr.Vaibhav Sehgal, Advocates for
the appellant.

Mr. D. D. Gupta, Advocate for
Mr. A. L. Jain, Advocate for the respondent.

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Rajesh Bindal J.

The husband is in appeal before this court against the judgment and decree dated 9.1.1993, passed by the learned court below, dismissing the divorce petition filed by him.

Briefly, the facts are that marriage between the parties was solemnised on 29.8.1973. Two daughters were born out of the wedlock on 24.11.1974 and 16.1.1976. The wife at the time of marriage was employed as a teacher in Government Girls High School, Bassi Pathana, whereas the husband was working with Food Corporation of India. The parties lived together till November, 1978, as claimed by the husband (till March, 1979, as claimed by the wife). Thereafter, the wife stayed with her father at Bassi Pathana along with her children. She came back in May, 1982 to Patiala and went back in July, 1983. The divorce petition was filed by the husband on 27.8.1985 on the grounds of cruelty and desertion, which was dismissed by the learned court below on 9.1.1993. It is this judgment and decree of

the learned court below, which is impugned in the present appeal.

The divorce petition was filed by the husband with the pleadings that the respondent-wife resided with the husband till October, 1978. She used to go to Bassi Pathana daily to attend her duties in the school and come back to Patiala in the evening. In November 1978, on account of marriage of her brother, she left Patiala many days before the marriage. While going, she took entire jewellery and clothes with her. Even after the marriage had been solemnised, the respondent did not come back to Patiala, rather, even got the daughters also admitted in the school at Bassi Pathana. The efforts made by the husband to bring her back to Patiala either by getting her transferred or even by resigning from the job, did not yield any result. With the intervention of respectables, the wife came back to Patiala in May, 1982. Both the children were got admitted in the school at Patiala. Again the request of the husband to get her transferred to or nearby Patiala was not taken in a good taste by the wife, as every time she used to get her transfer order cancelled while exercising her influence in the department. Her conduct was stated to be such which caused mental cruelty to the husband and made his life a hell. On 8.7.1983, the wife again left for Patiala in vacations along with the children and thereafter did not return back. As there was desertion for a period of more than two years, the petition for divorce was filed. It was further stated therein that the wife used to pressurise the appellant to leave his parents and settle with her at her father's house at Bassi Pathana, as she is the only female member in the house as her three brothers were living at Chandigarh. The appellant-husband could not accede to her request in view of the fact that he was the only son of his aged parents.

In reply, the allegations made by the husband were denied by the wife stating therein that at the time of marriage, one of the major consideration was that she was serving. The family of the husband, which consisted of his parents and four sisters, was not financially well-off and living in a small tenanted house. She lived at Patiala upto March, 1979. She was made to hand over whole of her salary to the appellant. She was merely given bus expenses. After the marriage, demand of dowry was

made. The respondent-wife was asked to furnish the account of her earning even prior to marriage. There was unhappiness on account of the fact that a male child was not born. The respondent being hard pressed and not in a position to take care of the children had no other choice but to shift to Bassi Pathana so that she could take care of the children, however, she used to visit Patiala on every week-end along with her daughters. In fact, the appellant did not object to her living at Bassi Pathana being unable to control his family members who used to mis-behave with the respondent. She had gone to attend the marriage of her brother only a day in advance. She had only taken few clothes and one set of ornaments. The averments regarding transfer of the respondent were denied. It was claimed that the respondent used to contribute for construction of the house by the appellant at Patiala. She also stayed at Patiala during vacations and had been supervising the work of construction of the house along with her mother-in-law. After Greh Parivesh ceremony, the respondent herself came back to Patiala in the hope that life will settle down. The respondent even attended the marriage of her sister-in-law in Patiala on 19.4.1984 and stayed there for a month continuously. She further stated that she was still ready and willing to comply with the wishes of the husband and stay with him at any place he chooses. The allegations regarding pressure on the appellant to shift to Bassi Pathana were denied stating therein that father of the respondent was more than 75 years of age and he was residing with his son at Chandigarh since 1980 on account of some old-age ailments. In fact, the respondent was living at Bassi Pathana along with her daughters.

In the replication, the husband denied the averments made by the respondent in the written statement and reiterated what was stated in the petition.

On the pleadings of the parties, the learned court below framed the following issues:

"1. Whether the respondent has treated the petitioner with cruelty as alleged ? OPP

2. Whether the respondent has deserted the petitioner continuously for a period of more than two years

preceding the filing of the petition, as alleged ? OPP

3. Whether the petitioner is entitled to a decree of divorce ? OPP

4. Relief."

After considering the evidence led on record and also the fact that during the pendency of divorce petition, the parties lived together for some time from June, 1988 to August, 1988, the petition was dismissed finding that there was no cruelty and further that it was pre-mature.

Learned counsel for the appellant-husband submitted that it is a case in which the parties lived together only for 5-6 years after the marriage and are residing separate for the last more than two decades. This itself amounts to cruelty as the husband is being deprived of the pleasures of matrimonial life. He was also deprived of the love and affection of his daughters. In fact, the respondent could not adjust in the matrimonial home. She used to taunt about the status of the family. She abandoned the matrimonial home and went to her parental home in November, 1978 on the occasion of marriage of her brother but never to come back. She got even the children admitted at Bassi Pathana. With the intervention of respectables, she was convinced to come back in May, 1982. Thereafter, she stayed for about a year and again went back on 8.7.1983. All persuasions to bring her to the matrimonial home failed. Under the situation, the appellant filed a divorce petition on 27.8.1985. As provided in law, efforts for reconciliation were made and as a result thereof from June to August, 1988, the respondent remained with the appellant intermittently for a few days but there was practically no matrimonial relation as there was no cohabitation.

He further argued that one of the grounds on which the learned court below held the petition to be pre-mature is that during the pendency of the petition before the learned court below, the parties had lived together. In fact, that was in terms of the policy. That cannot be taken to be against the appellant, as the court was required to make those efforts before finally deciding the case. That will not dilute the ground of desertion taken by the appellant as even after August, 1988, the petition

remained pending for about five years and the parties lived separate.

As regards cruelty, the learned court below held that there were vague allegations in the petition. The fact is that the appellant did not want to level wild allegations against the respondent. It should not be taken against the appellant.

He further submitted that the conduct of the respondent during the pendency of appeal before this court is also relevant and is required to be considered by this court, namely, that on 10.10.2000, FIR No. 518 was got recorded against the appellant and his mother under Sections 494/498-A IPC. Both were arrested and remained in jail. However, ultimately the trial court acquitted the respondent on 3.3.2007. The appeal filed by the State against the judgment of acquittal was dismissed on 11.2.2009.

Still further, the submission was that intention of the wife was not to live at Patiala. She made all kinds of excuses for the same. In July, 1978 she was transferred to village Lachkian near Patiala but got the transfer order cancelled stating that she only wanted to be transferred to Patiala, though the aforesaid village was merely eight kilometers from Patiala. He further referred to the statement of R.W. 5- Sardari Lal, brother of the respondent, who did not say that relation of the parties were strained. In fact, there was no cogent explanation available on record as to why the respondent was living separate. In the absence thereof, the desertion was duly proved. Reliance was placed upon Krishna Devi v. Brij Bhushan, 2007(2) RCR (Civil) 556; Sanghamitra Ghosh v. Kajal Kumar Ghosh, (2007) 2 SCC 220; Rishikesh Sharma v. Saroj Sharma,(2007) 2 SCC 263 and Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511.

On the other hand, learned counsel for the respondent submitted that the appellant in the present case has not been able to prove either the desertion or the cruelty. There is no specific instance in the petition filed by the husband regarding any act of cruelty by the respondent. In the absence of any specific allegation, no evidence led in support thereof cannot be considered, though even there is no evidence also as such on record. The wife never wanted to leave the matrimonial home. It was because of the conduct of the family members of the

appellant that in larger interest of the welfare of the two daughters, who were to be taken care of, that the respondent had shifted to Bassi Pathana where she could properly educate them. In fact, the appellant always shirked from his responsibilities. He was more attached towards his parents and sisters. Even after shifting to Bassi Pathana, which was with the consent of the appellant, the respondent had been regularly visiting Patiala on week-end or the holidays. She had even contributed for construction of the house at Patiala and also spent time in supervising the construction along with her mother-in-law. She had attended the Greh Parivesh ceremony in the year 1982. Not only this, she had also attended the marriage of her sister-in-law on 19.4.1984. That itself shows that relations of the families were not strained. At the very first occasion, the respondent in her reply to the divorce petition filed by the appellant, which though was a shock for her, stated that she was ready and willing to live with the respondent wherever he wants. She had even lived with him during the pendency of the petition before the court below during June to August, 1988. To submit that there was no co-habitation is patently wrong. The parties lived like husband and wife. In fact, the appellant always wanted to avoid the respondent. He was trying to find ways and means for the same. Her living at Bassi Pathana was with the consent of the appellant, however, now he wants to give it a colour of desertion. In support of her plea that she had been regularly visiting Patiala even after she had come to Bassi Pathana, she had produced oral evidence whereas against that, there is only the statement of the appellant with no corroboration. Though the husband is trying to take a stand that he had asked the respondent to leave the job and shift to Patiala but considering the fact that he was not supporting the family and she was to take care of the children, she did not take that decision. Now without the help of the appellant, both the daughters have been married. The FIR was got registered under Section 494 IPC for the reason that the husband in fact had either re-married or had living relations with some lady. The moment it came to the notice of the respondent, the FIR was got registered. Merely because the husband had been acquitted on account of lack of evidence,

the same should not be taken against the respondent. In matrimonial cases, many decisions are taken by either of the parties as advised by their counsels. The fact that the wife had not indulged in any litigation against the husband or his family member ever since she started residing separate in March, 1979 till the filing of the divorce petition, shows that there was no ill-will. He further referred to Diwali greeting card (Ex. R1) sent by the appellant in the name of the daughter which even had a message from the sister-in-law of the respondent to her and also for the children. The aforesaid greeting card shows that there was no ill-will as such in the family.

Heard learned counsel for the parties and perused the relevant referred record.

The undisputed facts on record are that the parties are living separate since July, 1983. Thereafter, for a short period, the parties lived together from 2.6.1988 to August, 1988 during the pendency of divorce petition before the learned court below as the efforts were being made for reconciliation. Though it is sought to be claimed that subsequent thereto as well the wife had been visiting her matrimonial home, but there is no definite material on record to show that. The husband, who is the only son of his parents, is living at Patiala, whereas the wife shifted to her parental home at Bassi Pathana. Even though initially it was sought to be claimed that because of the father of the wife being not well, she was living there but in fact it has come on record that later on the father had shifted to Chandigarh and was living with his son. The intention of the wife not to live with the husband is evident from the fact that once she was transferred to a village close to Patiala but she got her transfer order cancelled. Meaning thereby to state that the wife was living at Bassi Pathana on account of her job requirement will not be correct, more so it has come on record that even at the time of marriage the wife was employed and after the marriage she had been attending to her duty by coming daily to Bassi Pathana from Patiala.

It has also been claimed by the wife that she had performed the marriage of her daughters without the help of the husband. Nothing

produced on record has been referred to at the time of hearing to show as to whether father was even informed of the marriage and requested to join.

Still further, though admittedly from the year 1988, the parties are living separate but still on 10.10.2000, the wife got FIR No. 518 registered against the husband and his mother under Sections 494/498-A IPC. Both were arrested and remained in jail till they were released on bail. However, they were finally acquitted by the trial court and even the appeal filed by the State against the judgment of acquittal was dismissed. Meaning thereby, apparently false allegations were levelled against the husband and his mother regarding demand of dowry and also bigamy. This would certainly amount of cruelty.

The claim made by the wife that the husband was more attached towards his parents and the sisters is merely to be noticed and rejected considering the fact that a person has to perform many duties and maintain many relations. The marriage does not mean the end of other relations. The man is a social animal. Many a times it is seen in the society that the wife does not tolerate the relatives including the parents of the husband and that becomes the root cause of difference of opinion, whereas on the other side, she expects the husband to entertain and have relations with her family. These double standards adopted by the wives create bitterness. In case the things are taken positively and the wife joins the husband in performing the social obligations, this reason for difference of opinion can very well be avoided.

Even the finding recorded by the learned court below to the effect that the parties having lived together during the pendency of petition before the court below the divorce petition was pre-mature, is totally erroneous. The courts are required to make serious efforts for reconciliation, which is the mandate of law. It is only after the process of mediation and conciliation in the matrimonial dispute fails that the courts should proceed to decide the case on merits. In the present case as well, such an effort was made by the court and it succeeded also to some extent, as the parties were made to live together. However, still since they were proceeding further in two parallel lines, there was no joining point. They

remained where they were. The parties were, in fact, summoned in this court in person as well, but there were no chances for reconciliation. Denial of pleasure of matrimonial life for such a long duration amounts to cruelty.

For the reasons mentioned above, in my opinion, the appellant has been able to make out a case for grant of divorce on the grounds of desertion and cruelty. Accordingly, the appeal is accepted. The judgment and decree of the learned court below is set aside. The divorce petition filed by the appellant-husband is accepted. Decree sheet be prepared accordingly.

(Rajesh Bindal)
Judge

May 03,2011
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